

GOVERNMENT OF ANDHRA PRADESH  
ABSTRACT

TRIBAL WELFARE DEPARTMENT –Appeal Petition filed by Smt M.V.Sudhavathi D/o Motu Nagaiah, Attendar, O/o Regional Transport Officer, Kadapa, Kadapa District, filed under Section 7(2) of Act 16 of 1993 - against the Proceedings, dated 11.2.2005 of the Collector, Kadapa District– Appeal Rejected – Orders – Issued.

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SOCIAL WELFRE (CV.2) DEPARTMENT

G.O.Ms.No. 52

Dated:23-5-2009  
Read the following:

- 1.Proceedings of the Collector, Kadapa District Ref.C5/988/M/99, dated 11.2.2005.
- 2.Appeal Petition filed by Smt M.V.Sudhavathi D/o Motu Nagaiah, Attender, O/o Regional Transport Officer, Kadapa, Kadapa District, through his counsel dated 14.3.2005.
- 3.Govt.Memo No. 2470/CV.2/2005-1, dated 13.4.2005.
- 4.Letter from the District Collector, Kadapa, R.Dis.C5/988/M/99, dated 23.09.2005.
5. Govt.Memo No. 2470/CV.2/2005-8, dated 19.3.2008.

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ORDER:

Smt. M.V.Sudhavathi D/o Motu Nagaiah, Attender, O/o Regional Transport Officer, Kadapa, filed appeal petition under Section 7 of Act 16 of 1993, against the Proceedings dated 11.2.2005 of the District Collector, Kadapa, for cancellation of her ST Yerukala Caste Certificate, and submitted the following grounds in support of her claim:

- a) The order passed by the District Collector is contrary to law, weight of evidence and probabilities of the case.
- b) The District Level Scrutiny Committee and the MRO., Vallur, conducted enquiries behind the back of the appellant herein.
- c) The appellant was not even permitted to cross examine any witnesses and she requested to permit to represent a counsel on her behalf the same was denied.
- d) The appellant right from the beginning lived with the adoptive parents and continued her studies living with her adoptive parents.
- e) The District Collector, Kadapa cancelled the caste certificate only on the ground basing on the judgment of the Hon'ble High Court of Andhra Pradesh rendered in W.P.No.6365 of 2002. The facts in the present case are different and Judgment of the Hon'ble High Court has no application to this case.
- f) The District Collector failed to furnish the copies of preliminary report submitted by the MRO., Vallur to the appellant and no opportunity was given to cross examine any witnesses before the District Level Scrutiny Committee. Hence the enquiry is vitiated by non observance of due process of law and procedural fair ness as held in Judgment of the Hon'ble High Court reported in 2001 (2) A.L.D. page No.18.

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- g) The appellant in her child hood lived with her adoptive parents and suffered all disadvantages or handicaps which the members of homogenous group, class or tribe or subjected to have undergone. The ST community elders also accepted her as Yerukala woman.
- h) The alleged enquiry conducted by DLSC is one sided and no opportunity was given to the appellant to defend her case.

2) Govt. in Memo 3<sup>rd</sup> read above, has requested the District Collector, Kadapa to furnish parawise remarks and connected records on the appeal petition filed by Smt. M.V.Sudhavathi. In reference 4<sup>th</sup> read above, the District Collector, Kadapa, has furnished connected records and the following remarks:

- a) The cancellation of bogus Yerukala (ST) caste certificate of the appellant, passed by the District Collector are purely in terms of the connected rule position of Act 16 of 1993. All the facts of the case, documentary and circumstantial probabilities of the case have been thoroughly examined before passing the orders. The orders are not contrary to law.
- b) It is not correct to state that the MRO., conducted enquiry behind the back of the appellants. The MRO enquired the appellant and her biological and adoptive parents. The appellant has not filed any Memo requesting to permit her to examine the witness, examined by the DLSC. In the enquiry, the the statements were recorded from her biological parents and the adoptive brother.

From the above, it can be observed that all the above statements were recorded by the DLSC. from all the connected people. Such being the case it shall not be a ground to contend that the enquiry was conducted behind the back of appellant.

- c) It is not correct to state that the appellant was not even permitted to cross examine the witnesses. The appellant never asked orally or in writting to permit her to represent a counsel on her behalf. Further, there are no PWs and LWs as in the cases pending before the court of Law in the cases enquired into by the DLSC. The individual, her biological parents and adoptive mother are the witnesses examined by the DLSC. in this case. In view of the above two reasons, the individual cannot contend that she was not permitted to cross examine the witnesses.
- d) During the enquiry the MRO. and consequential enquiry by the committee, it was revealed that in the voters list of 1996 and 2002 and in the school records, the biological parents names were entered. The biological father of appellant deposed his statement before the committee that after adoption the appellant was living under care of biological parents and also her marriage was conducted under Yadava (BC) customs and traditions and that Sudhavathi marriage "Kanyadanam" was performed by the biological father. After the demise of appellant's adoptive father, Sudhavathi is living with her biological parents. Sudhavathi during her pregnancy and delivery period lived with the biological family only. Such being the case, it shall not be a good ground to contend that the appellant lived with her adoptive ST parents.
- e) The core aspect in the Judgment of Hon'ble High Court in W.P.No. 6365/02 and the present case are one and the same i.e., claiming ST reservation by higher caste persons under the guise of adoption. In both the cases, adoption drama was enacted just for the sake of official formality and to have the cover of legality. In both the cases, deeds were registered at later dates and the

persons concerned married in their original community. Such being the case, the above judgment got a great quantum of applicability, over present case.

Further the Hon'ble High Court rejected the appeal filed by the delinquent in that case. The Govt. also rejected his appeal for the same vide G.O.Ms.No.17, SW (CV.2) Dept., dated 5.3.2002. In this case, before passing final orders by the Collector, not only the above judgment, but also the report of the MRO, Vallur, documentary evidence available, statements of the appellant and other concerned and rule position in this case were all considered. Therefore the contention of the appellant is not correct.

- f) The appellant did not file any petition through the counsel before Joint Collector for supply of the statements recorded by the MRO, Vallur and DLSC members. Under Section 6 of Act 16 of 1993, burden of proof lies with the accused only. Further, as per Rule 74 of the Indian Evidence Act, 1874, report submitted by a subordinate officer shall not fall within the orbit of public documents. Statements recorded by the MRO. are vital documents that decide the path of enquiry of the committee. Therefore, they are confidential in nature. If the appellant came to know the contents thereof, they may, try to vitiate the enquiry processes.

The adoptive brother deposed statement before the Committee that the appellant does not visit her biological parent's house and the marriage was conducted according to the Yerukala (ST) tribe customs and also he performed "Kanyadanam" during the marriage. As such the statements of the both the biological parents and adoptive parents are in contrary with each other in their statements. If the documents are supplied to her, she shall naturally try to influence them to dilute the enquiry process.

- g. The Committee gave ample opportunity to the appellant and biological parents and adoptive brother who appear before the Committee and recorded their statements were recorded by the Committee. As such it is not true say that committee is one sided and no opportunity was given to the appellant to defend her case.
- h. Even though the adoption is genuine, the individual still can not claim Yerukala (ST) caste certificate on the basis of adoption as provision of the Hindu Adoption and Maintenance Act, 1956 are not applicable to the members of the ST. Section 2(2) in the said Act is reproduced below "notwithstanding any thing contained in Sub-Section (1), nothing contained in this Act shall apply to the members of any ST within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the official Gazette, otherwise directs".

The case was posted for personal hearing on 5.8.2006, 23.7.2007, 16.8.2007, 31.8.2007, 17.9.2007, 20.11.2007 and finally posted on 27.3.2008. The appellant attended only one time on 31.8.2007. The Counsel for the appellant attended on 5.8.2006, 16.8.2007, 20.11.2007. The appellant and her Counsel did not file any documentary evidences to prove her claim as ST at the time of personal hearing.

On careful examination of the contentions and grounds for appeal filed by the appellant, enquiry report, statement of the appellant, her biological parents, along with the parawise remarks of the District Collector, Kadapa, it is found that :

- 1.The appellant has claimed S.T. status as belonging to "Yerukala" community and also obtained community certificate to that effect, based on her adoption by tribal parents from her natural parents belonging to Golla (Yadava) caste

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which comes under Backward Classes. She is also employed under S.T. category.

2. As per section 2 (2) of the Hindu Adoption and Maintenance Act, 1956 (Central Act) "Notwithstanding anything contained in sub-section (1), nothing contained in this Act, shall apply to the members of any scheduled tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government by notification in the official gazette, otherwise directs".
3. Therefore, adoption cannot be a means for claiming Scheduled Tribe status and adoption of non-tribal children by Scheduled Tribe parents is invalid for the purpose of Constitutional benefits. Further, the Hon'ble High Court of A.P. in W.P.No.11914 of 1985, Bandi Srinivas Vs Osmani University, Hyderabad and others held that "Therefore, I have no hesitation to conclude that though it may be permissible for a plain man/woman to go in adoption under customary law to a tribal such an adoption shall be only for the purpose of personal law. But for the purpose of the Constituion, such a person outside the fold of the Scheduled Tribes and he cannot be treated as a ST candidate".
4. In a similar case of S.T. status claim through adoption, as quoted by the District collector, Kadapa in the impugned proceedings i.e. in W.P.No.6365 of 2002 in the Judgment dated 23.4.2002, the Hon'ble High Court held that "In this case, the court is convinced that the Government rightly rejected the appeal. The petitioner is not entitled to claim benefits as ST (Yerukala) caste. His employment be forthwith withdrawn without giving notice".
5. Therefore, in exercise of the powers conferred under Section 7 of Act 16 of 1993, and Rules made thereunder, the appeal petition filed by Smt. M.V.Sudhavathi, Kadapa District is hereby rejected, upholding the orders of the District Collector, Kadapa issued in Proceedings No. Ref.C5/988/M/99, dated 11.2.2005. The stay granted by the Govt. in reference 3<sup>rd</sup> read above is hereby vacated.
6. The records received from the District Collector, Kadapa vide reference 4<sup>th</sup> read above are herewith returned to him and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,  
PRINCIPAL SECRETARY TO GOVT.

To

The District Collector, Kadapa District (WE).

Original Record file bearing No. R.Dis.(C5)988/M/02,

Containing pages CF.173 ,NF.18.

Smt. M.V.Sudhavathi D/o Motu Nagaiah, Attender,

O/o Regional Transport Officer, Kadapa, Kadapa District.

Sri D.Kodanda Rami Reddy, Advocate,

Flat No.201, 2<sup>nd</sup> Floor, Siris Sravani Residency,

Kanthi Nagar, Mahdipatnam, Hyderabad. 500 028.

Copy to: The PS to M(TW & RIAD)/ PS to Prl.Secretary(TW)

The Director of Tribal Welfare, Hyd.

The Regional Transport Officer, Kadapa, Kadapa District.

//Forwarded::By Order//

SECTION OFFICER.